



ASC

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Editorial



THE FINANCE MINISTER SMT. NIRMALA SITHARAMAN VOWS TO STRENGTHEN INSOLVENCY CODE AMID CRITICISM OF CREDITOR LOSSES

Smt. Nirmala Sitharaman, during inauguration of the refurbished court premises of the National Company Law Appellate Tribunal (NCLAT) in Chennai, stated that the government is willing to make amendments to the Insolvency and Bankruptcy Code (IBC) to enhance its effectiveness. The finance minister addressed the issue of delays in appointments to tribunal benches and further stated, "Whether it is an amendment to the IBC, filling up positions, or to make sure there are enough Resolution Professionals (RPs), the Centre has always been in touch with the Insolvency and Bankruptcy Board of India, the latest amendment wherein the number of cases handled by the RPs being made limited would only bring in greater scrutiny to the process and make it more transparent".

The comments come as another set of IBC amendments is expected to be tabled in Parliament soon, including extending the pre-packaged insolvency scheme and a special insolvency regime.

Expect more vibrancy from Insolvency Resolution Process

Stay Alert!

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NCLT approves Rs 990-cr joint bid by KGK Realty and Dhoot Infra for Sare Gurugram

The NCLT has approved the Rs 990-crore resolution plan submitted by a consortium comprising KGK Realty and Dhoot Infra for debt-ridden realty firm Sare Gurugram, a unit of Sare Homes. While approving the bids, the Principal Bench of NCLT, comprising President Ramalingam Sudhakar and A K Srivastava, Member Technical, directed to deliver possession of the flats strictly as per the time frame promised in the resolution plan. The said approval by the National Company Law Tribunal (NCLT) will benefit more than 1,300 homebuyers who were stuck since 2012 and awaiting possession of their dwelling units. The plan provides for a total outlay of Rs. 990 crore and the successful resolution applicant proposes to hand over the possession in a time-bound manner. The bench had also directed that a monitoring committee will be constituted within seven days, which will take all necessary steps for expeditious implementation of the approved resolution plan.

The NCLT, vide the order, has directed that all projects of Crescent Parc should be completed within 24 months from the construction commencement date. While the Sports Parc Project shall be completed over a period of 42 months starting from the completion of one year after the effective date. The resolution plan was approved by the Committee of Creditors by 100 per cent votes. In the said consortium, KGK Realty is the 'Lead Member' with 74 percent share and the rest 26 per cent is with Dhoot Infra.

The NCLT Bench have further directed that if the consortium fails to comply the order, a performance bank guarantee of Rs 20 crore deposited by them, shall be forfeited.

NCLAT will review NCLT's decision on YEIDA's claims regarding compensation to farmers in the Jaypee Infratech case

The National Company Law Appellate Tribunal (NCLAT) has asked courts not to rely on portions determining compensation to farmers in Yamuna Expressway Industrial Development Authority's (YEIDA) claims in National Company Law Tribunal's (NCLT) order dated 7th March, 2023 approving the resolution plan submitted by the Suraksha Group for Jaypee Infratech through the insolvency process.

The NCLAT has found substantial grounds to entertain and hear the appeal as NCLT's order virtually extinguishes YEIDA's claim of additional compensation farmers' compensation by allocating INR 10 lakhs.

YEIDA had filed claims for Rs 6,111.59 crore, mainly on account of pending works and External Development Charges (EDCs), unexecuted external development works, and other future works.

It had also sought 64.7 percent additional compensation payable to farmers from whom it had acquired land, raising a claim of approximately Rs 1,689 crore. However, Suraksha, the successful resolution applicant, had allocated only Rs 10 lakh towards EDCs, and NCLT rejected its claims for additional compensation payable to the farmers and others.

NCLT Mumbai Approves Resolution Plan Of ARCIL Lead Consortium For Unimark Remedies Limited

NCLT Mumbai has approved a 127 crore resolution plan of ARCIL, Intas Pharmaceuticals Ltd & Shamrock Pharmachemi (P) Ltd as consortium for Unimark Remedies Limited ("Corporate Debtor") under section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016"). The Company was admitted into Corporate Insolvency Resolution Process ("CIRP") vide an order dated 03.04.2018. The Resolution Professional initially admitted claims of 1072.65 crores from Financial Creditor, of 50.16 crores from Operational Creditors, of 11.05 crores towards workmen and employees dues and of 38.40 crores towards other Statutory Liabilities.

The average Liquidation value and Fair value of the assets of the company amounted to 124.02 crores and 178.23 crores respectively. The Company received resolution applications from 3 applicants. The CoC approved the resolution plan of ARCIL, Intas Pharmaceuticals Ltd. & Shamrock Pharmachemi (P) Ltd. as consortium with a voting share of 72.25% in its 14th meeting held on 27.12.2018.

The resolution plan offered an 11.2% recovery of 1072.65 crores to the Financial Creditors amounting to 121 crores. It further offered a 1.9% recovery of 50.16crores amounting to 1 crore to Operational Creditors. The resolution plan further offered a 45.24% recovery of 11.05 crores amounting to 5 crores towards workmen and employee dues.

NCLAT directs Ansal Housing to pay money to operational creditor

NCLAT has set aside an NCLT order that rejected an operational creditor's plea seeking insolvency proceedings against Ansal Housing, terming it as a "fit case for the admission of CIRP". A two-member National Company Law Appellate Tribunal (NCLAT) bench said realty firm Ansal Housing has an operational debt due and payable, and dismissal of the Section 9 petition by the NCLT is "perverse and illegal and liable" to be set aside.

Moreover, it has also directed Ansal Housing to pay Rs 12.72 lakh to Clicbrics Technologies within a month of the passing of this order. It is mentioned in the said order dated 5th April, 2023 that the above payment shall be released within 30 days from the date of uploading of the order failing which the Corporate Debtor would come under the rigours of CIRP (corporate insolvency resolution process) on the expiry of said 30 days period. It also added that in case, the operational creditor refuses to accept the above sum as payment towards operational debt, the Section 9 petition shall become infructuous and deemed to have been dismissed.

Section 9 gives power to the operational creditors of a company to initiate a corporate insolvency resolution process in case of a default. The NCLAT direction came over a petition filed by Clicbrics Technologies against the order passed by the New Delhi-based bench of the National Company Law Tribunal (NCLT). The NCLT had dismissed the plea filed by the operational Creditor under Section 9 of the IBC seeking initiation of CIRP against Ansal Housing Ltd.

Clicbrics Technologies was the exclusive real estate agent for brokering the sale/ purchase of units of the residential project - Ansal Town, Meerut, for the period July 10, 2018, to December 31, 2018. It had raised bills for brokering commission from time to time. However, Ansal stopped making payments for invoices raised by the operational creditor w.e.f. October 10, 2018. Later, it sent a demand notice under Section 8 of IBC on March 27, 2019, claiming an amount of Rs 14.70 lakh. On non-receipt of any further payment, the operational creditor moved NCLT. However, the NCLT rejected it observing that the operational creditor had approached with a mala-fide intention and not for genuine resolution having shown an unwillingness to accept the amount, which Ansal Housing had endeavoured to pay towards the outstanding dues.

This order was set aside by the NCLAT observing that "To sum up, the operational debt which had admittedly become due and payable having not been disputed prior to the issue of demand notice and not been discharged by the Corporate Debtor, this is a fit case for the admission of CIRP". "The dismissal of the Section 9 petition by the Adjudicating Authority is perverse and illegal and liable to be set aside," it added.

NCLT New Delhi Orders Liquidation Of M/S. Hema Automotive Pvt. Ltd Under Section 33 Of IBC

The National Company Law Tribunal ("NCLT"), New Delhi Bench, comprising of Shri Bachu Venkat Balram Das (Judicial Member) and Shri Rahul Bhatnagar (Technical Member), has ordered for Liquidation of M/s. Hema Automotive Pvt. Ltd. ("Corporate Debtor"). After initiation of CIRP, the CoC resolved to Liquidate the Corporate Debtor with 100% voting as the Corporate Debtor was not a Going Concern since the last 2 years before the initiation of CIRP. All the assets of the Corporate Debtor had already been realized by Hero Fincorp Ltd under the SARFAESI Act, 2002 before commencement of CIRP.

NCLT Mumbai Approves M/S Steel Line's Resolution Plan For J-Marks Exim (India) Private Limited

The National Company Law Tribunal ("NCLT"), Mumbai Bench, comprising of Shri Kishore Vemulapalli (Judicial Member) and Shri Prabhat Kumar (Technical Member), has approved the 8.91 crore Resolution Plan of M/s Steel Line (India) Private Limited for J-Marks Exim (India) Private Limited ("Corporate Debtor"). The Resolution Plan offered a 14.9% recovery of 53.48 crores to the Secured Financial Creditor amounting to 7.98 crores. It further offered Rs. 18.71 Lakhs in total for claims of operational creditors, other creditors and payment towards statutory duties including Income Tax and Service Tax.





RECENT JUDGMENTS

Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. Ltd. Vs. Jagdish Kumar & Anr.

Creditor Who Don't Submit Claim Or Raises Issues In CIRP, Has No Right To Challenge Resolution Plan: NCLAT Delhi

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Rakesh Kumar Jain (Judicial Member) and Shri Naresh Salecha (Technical Member), has held that a creditor who neither submits its claim before the IRP/Resolution Professional, nor raises any issue during the entire CIRP period, cannot be allowed to challenge resolution plan which has already been implemented.

Manmohan Gupta v. MDS Digital Media Pvt. Ltd. & Anr.

Adjudicating Authority is Not Required To Assess The Correct Amount Of Debt At Admission Stage: NCLAT Delhi

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Shri Barun Mitra (Technical Member), has held that the Adjudicating Authority is not required to express any opinion on the correctness of debt amount at the admission stage of petition. Rather, it is the Resolution Professional who would subsequently assess the correct debt amount at the time of collation of the claims.

India Medtronic Private Limited v. Healthcare Associates Private Limited

Poaching Of Employees By The Operational Creditor Does Not Fall Within The Ambit Of Pre-Existing Dispute: NCLT Kolkata

The National Company Law Tribunal, Kolkata Bench, comprising Shri Rohit Kapoor (Judicial Member) and Shri Balraj Joshi (Technical Member), has refused to term poaching of employees by the Operational Creditor as a pre-existing dispute. Even though the Corporate Debtor had blamed the Operational Creditor for causing business losses due to poaching of its employees, this action cannot be called a pre-existing dispute as it did not fit the definition of genuine dispute given under the Supreme Court judgment of Mobilox Innovations Private Limited v. Kirusa Software Private Limited, the Tribunal held.

Baba Baidnath Spinners Pvt. Ltd. v Textile Solutions

NCLAT Delhi Upholds Rejection Of ‘Discovery & Inspection’ Application Filed By Corporate Debtor In Section 9 Petition

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, comprising of Justice Ashok Bhushan (Judicial Member) and Shri Barun Mitra (Technical Member), has upheld the rejection of an application for discovery and inspection of documents filed by the Corporate Debtor in a petition under Section 9 of IBC. The Bench held that the worth of document filed by the Operational Creditor is to be considered at the time of considering the Section 9 petition. Further, the embargo to file relevant documents in support of its case is on the Operational Creditor alone.

During the pendency of the Section 9 petition, the Corporate Debtor filed an application for discovery and inspection of documents before the Adjudicating Authority. The Corporate Debtor prayed to bring on record additional documents which are to be filed by the Operational Creditor and further sought direction to provide discovery and inspection of all those documents. The Operational Creditor opposed the application while stating that documents it would like to rely on have already been filed. Further, if any documents are not filed then the consequences will be faced by the Operational Creditor alone. Being satisfied by the Operational Creditor’s stand, the Adjudicating Authority dismissed the application. An appeal to such dismissal order was filed before the Appellate Authority subsequently.

Clearwater Capital Partners Singapore Fund IV Private Limited and Anr. V. Rajesh Estates and Nirman Private Limited

Financial Creditors As Minority Debenture Holder Entitled To Initiate CIRP Irrespective Of Presence Of Debenture Trustee: NCLT Mumbai

The National Company Law Tribunal, Mumbai Bench, comprising Shri H.V. Subba Rao (Judicial Member) and Smt. Madhu Sinha (Technical Member), has held the Debenture Trustee is not the only person empowered to initiate Corporate Insolvency Resolution Process (“CIRP”), even though the Financial Creditors were Minority Debenture Holders. It was further observed that Section 71(6) of the Companies Act, 2013 construes Debenture Trustee as one who shall protect the interests of Debenture Holders. It was observed that even though Financial Creditors are Minority Debenture Holders, the Debenture Trustee is not the only person empowered to initiate an action.

Royal Manpower Services v. Faridabad Autocomp System Pvt. Ltd.

Threshold Limit Of Rs. 1 Crore Applicable From The Date Of Filing And Not From Date Of Registration Of Petition: NCLAT Delhi

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Shri Kanthi Narahari (Technical Member), has held the revised minimum threshold of Rs. 1 Crore is applicable from the date of filing of petition and not from the date of registration. The Bench revived a petition under Section 9 of IBC having a default lesser than Rs. 1 Crore, which was filed in 2019 but got registered in 2021. The Bench observed that the revised threshold limit of Rs. 1 Crore was not applicable to the Operational Creditor’s petition since the same was filed in 2019 and subsequent registration of application will not change the date of filing.

Shri Baiju Trading and Investment Private Limited v. Mr. Arihant Nenawati & Ors.

Section 66 Of IBC: Fraud Includes A Debt Which Debtor Has No Intention To Repay: NCLAT Delhi

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, comprising of Justice Rakesh Kumar Jain (Judicial Member) and Shri Naresh Salecha (Technical Member), has held under that ‘fraud’ for the purpose of Section 66 of IBC would consist of debts which the Debtor has no intention to repay or does not expect to be able to pay. Further, fraud may also happen by way of false representation, without there being any intention to pay back. The expression ‘any persons’ in Section 66 of IBC includes a knowing party to the carrying out of fraudulent transactions.

M/s. State Bank of India v M/s. Hackbridge Hewittic and Easun Limited

Subsequently Modified OTS Proposal Would Further Refresh The Limitation Period: NCLAT Chennai

The National Company Law Appellate Tribunal (“NCLAT”), Chennai Bench, comprising of Justice M. Venugopal (Judicial Member) and Shri Naresh Salecha (Technical Member), has held that submission of a One Time Settlement (“OTS”) proposal is acknowledgement of debt in terms of Section 18 of Limitation Act, 1963. Further, any fresh or subsequent/modified OTS proposal would further extend the limitation period by three years.

The Bench observed that Section 18(1) of the Limitation Act, 1963 provides that where before the expiration of the prescribed period for a suit/application in respect of any right, an acknowledgement of liability in respect of such right has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was signed.

It was observed that the Adjudicating Authority took a stand that OTS proposal does not extend the limitation period. On the same issue, the Bench held as under:

“In fact, the ‘impugned order’ takes into account only on 06.10.2016 when the Principal Borrower gave its ‘OTS’ proposal to the ‘Appellant’ which was accepted by the ‘Appellant’ herein issuing the sanction letter of Rs. 69.50 Crores. The ‘Adjudicating Authority’ therefore clearly erred in not considering that submission of the ‘OTS’ is clearly acknowledgement of debt by the Principal Borrower and any fresh or subsequent/ modified ‘OTS’ would further extend the limitation period by three years.”

It has been held that submission of an OTS proposal tantamount to acknowledgement of debt by the Principal Borrower and any subsequent modification of such proposal would further extend the limitation period by three years. The Bench further noted that since the liability of Guarantor is co-extensive with debt of Principal Borrower, therefore, the acknowledgment of debt by OTS proposals were also deemed acknowledgements by the Guarantor of its liability as a guarantor on behalf of the Principal Borrowers.

Raghav Jain v. Jalesh Kumar Grover

Minutes of meeting to be considered as reliable evidence to determine an event in the normal course of business

The NCLAT held that it shall only rely upon the minutes of the meeting recorded in the normal course of business as evidence to determine whether the appellant, being a prospective resolution applicant, had quit the meeting or was thrown out of the negotiation process, which otherwise cannot be determined in the summary proceedings in absence of any evidence.

Kotak Mahindra Bank Limited v. Resolution Professional of Universal Buildwell Private Limited

Homebuyer entitled to receive possession of unit if allotted under a buyer-builder agreement, though unregistered

The NCLAT held that even when area under a housing project was allotted to homebuyer via unregistered buyer-builder agreement, homebuyers had an interest to receive the possession of the unit. Basis this, NCLAT upheld the decision of Adjudicating Authority of treating the units for which there exists buyer-builder agreement albeit unregistered, the said assets would not form part of the asset of the corporate debtor.

For enquiries related to:

- Insolvency Process,
- Bankruptcy Process,
- Filing petition with NCLT/DRT,
- Appointment of Insolvency Professionals,
- Assets Management of the Company,
- Hearing of Cases or any other enquiries



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